

CHARLES O. TONEY, JR.,)
)
Plaintiff,)
)
v.) Case No. 1:10-cv-299
)
MARK RAULSTON, BRAIN WOODS,) Judge Mattice
and JOHN DOES 1-5,)
)
Defendants.)
)

Thus, pursuant to Rule 4(m), if a plaintiff has not timely served a defendant and shows good cause for such failure, the Court must extend the time for service. If, however, no

good cause for such failure is shown, Rule 4(m) permits the Court to choose, in its discretion, either to dismiss the action without prejudice as to that defendant or to direct that service be effected within a specified time.

In this case, there is no evidence in the record that Plaintiff has served the Complaint and Summons on Defendants. Further, Plaintiff failed to respond to the Court's Order and, therefore, has not provided good cause for the failure to timely serve Defendants. As a result, pursuant to Rule 4(m), the Court is within its power to dismiss Plaintiff's action.

III. CONCLUSION

Accordingly, for the reasons explained above, the Court **ORDERS** that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 4(m). The Clerk is directed to close the file in this case.

SO ORDERED this 12th day of April, 2011.

/s/Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE